

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C. 20554

In the Matter of )  
 )  
 MCI COMMUNICATIONS CORPORATION ) RM-9108  
 )  
 Petition for Rule Making re )  
 Billing and Collection Services )  
 Provided by Local Exchange Carriers for )  
 Non-Subscribed Interexchange Services )

TO: The Commission

RECEIVED  
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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**COMMENTS IN SUPPORT OF PETITION FOR RULE MAKING**

Pilgrim Telephone, Inc. ("Pilgrim"),<sup>1</sup> by counsel and pursuant to *MCI Telecommunications Corp. Files Petition for Rule Making Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services*, RM-9108, Public Notice, rel. June 25, 1997 ("Public Notice"), hereby files its Comments in support of the above-captioned Petition for Rule Making ("Petition") filed by MCI Communications Corporation ("MCI").<sup>2</sup> Pilgrim supports MCI's request for Commission-enacted safeguards that will assure billing and collection by incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") for interexchange carrier ("IXC") services. Moreover, with the minor caveats set forth below, Pilgrim believes that the Commission

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1. Pilgrim is an interstate interexchange carrier providing common carrier services pursuant to tariffs on file with the Commission. Pilgrim Tariff FCC No. 1, effective March 7, 1995, and previous versions. Pilgrim offers a variety of common carrier services, including 1+ (where available), collect calling, 0+ (generally via 800-number access), and teleconferencing services. Pilgrim also provides a number of enhanced and/or information services, including specialized teleconferencing, voice mail, voice store and forward, and information or entertainment services.

2. Pursuant to the Public Notice, which established July 25, 1997, as the date by which interested parties must file comments in this proceeding, these Comments are timely filed.

should initiate the rule making requested by MCI, frame the proceeding expansively enough to include all casual access services, and adopt regulations therein that are permanent rather than transitional in nature. In support whereof, Pilgrim respectfully submits the following:

I. ANY REGULATION AFFECTING BILLING AND COLLECTION SERVICES PROVIDED BY THE LECS MUST ADDRESS THE FULL RANGE OF CASUAL ACCESS SERVICES

That ILECs and CLECs (collectively "LECs") exercise control over billing and collection services provides LECs a significant, if not insurmountable, marketplace advantage over competitors as to a number of casual access markets and services. See Comments of Parties in *Common Carrier Bureau Operators Support System Forum*, May 29, 1997, and in *Public Forum on Local Exchange Carrier Billing for Other Businesses*, Tuesday, June 24, 1997 ("*Public Fora*"). These markets and services include 1+, 0+, collect calling, calling card calling, CLASS services, \*-code services, enhanced directory assistance, N11 calling, telemessaging,<sup>3</sup> teleconferencing, time, weather, pay-per-call services, Internet access, and other information and enhanced services.

Very much aware of the marketplace advantage of the "single-bill" concept, at least two of the Regional Bell Operating Companies ("RBOCs") have promoted their own calling card services and casual access telemessaging services, citing specifically the advantage of receiving a single bill from the LEC for all these services. For the reasons cited by MCI and others in the *Public Fora*, it is impractical, if not impossible, for casual access services to be sold any other way than through LEC billing. The Commission should initiate the rule making requested by MCI and, as part thereof, seek comment and look toward adopting

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3. The 1996 Act accorded specific non-discriminatory protection for telemessaging services. 47 U.S.C. § 260(a). As to the provision of billing and collection services, many CLECs have chosen to ignore altogether this change in their responsibilities vis-a-vis non-CLEC telemessaging service providers, including casual access providers.

regulations requiring the LECs to provide comprehensive billing and collection services. To do otherwise would render nugatory the other competitive requirements arising from the adoption of the 1996 Act.

## II. BILLING AND COLLECTION SERVICES ARE ESSENTIAL FACILITIES WHICH MUST BE PROVIDED ON A NONDISCRIMINATORY BASIS

The Commission should initiate a rule making to ensure that LEC billing and collection services are consistently available to casual service providers, because such services constitute an "essential facility." As such, LECs should not be permitted to discriminate as to who has access to such facilities.

The essential facilities doctrine arises from *United States v. Terminal R.R. Assoc.*, 224 U.S. 383 (1912), and its progeny. The doctrine holds that the owner of a facility deemed "essential" owes special duties to those who seek use of the facility or services where:

- 1) the facility or service is controlled by a monopolist;
- 2) the monopolist's competitors are unable to practically or reasonably duplicate the facility or service;
- 3) the monopolist has denied the use of the facility or service to a competitor; and
- 4) the monopolist may feasibly provide the facility or service to competitors.

*MCI Communications, Inc. v. AT&T*, 708 F.2d 1081 (7th Cir. 1983) ("*MCI v. AT&T*"). If a facility or service is deemed "essential," its owner may be required to provide nondiscriminatory access to the facility or service. In *MCI v. AT&T*, the court determined that AT&T, which had yet to divest the Bell Operating Companies, owned local loops that were an essential facility as to the provision of long distance phone service.

Similarly, billing and collection services constitute an essential facility as to a LECs' ability to bill all telecommunications customers, an ability casual access providers lack, yet one that is essential to providing their services. As to the first prong, Pilgrim's experience indicates that LECs, particularly the "RBOCs" have monopoly power over billing and collection, and they are more than willing to wield that power to their competitive advantage or to abuse it altogether. Pilgrim has encountered take-it-or-leave LEC billing and collection "negotiation" tactics similar to those cited by MCI. Petition at 2.<sup>4</sup> In addition, Pilgrim has encountered refusal to provide billing and collection for particular classes of communications services from LECs that sell those same class of services, for example, collect calling. In Pilgrim's experience up to 35% of telephone users in a given billing area have unlisted numbers or are otherwise unavailable via BNA. That, coupled with significant time delays in BNA provision, places Pilgrim and similarly situated casual access providers at a competitive disadvantage vis-a-vis billing and collection. To the extent that all IXC's and casual access providers require competitively reasonable billing and collection services for the universe of potential customers, in other words, all telephone users, the LECs wield monopolistic power over such services.

As to the second prong, MCI more than adequately catalogs the barriers to feasibly duplicating, or finding feasible substitutes for, LEC-provided billing and collection. Petition at 6-10. For example, AT&T's multi-million-dollar efforts, and resulting difficulties, in migrating its customers from LEC billing have been well documented. Despite its efforts, the vast majority of AT&T's long distance revenues remain totally dependent upon LEC

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4. Such practices have recently been soundly criticized by the Commission. *Marcus Cable Assocs. v. Texas Utils. Elec. Co.*, PA No. 96-002, Declaratory Ruling and Order, DA 97-1527, ¶ 27, released July 21, 1997 (CSB).

billing and collection services. John J. Keller, *AT&T Names Ianna to Succeed Ponder In Creating Nationwide Billing System*, WALL STREET JOURNAL, Monday, May 5, 1997, at B6 (copy attached hereto at Appendix A). Pilgrim notes in this regard that matching BNA to customer records requires both significant processing power that is surpassingly expensive and specialized software which is not generally available.

MCI notes, and Pilgrim concurs, that certain LECs have denied or effectively denied billing and collection services. In fact, in Pilgrim's experience, these denials have more often than not been impermissibly based on content distinctions that have no place in the provisioning of billing and collection services. In addition to engaging in take-it-or-leave-it negotiation tactics, *see* Petition at 2, LECs also routinely demand detailed and proprietary technical and marketing information when they do provide billing and collection. This practice is improper and results in a significant competitive advantage. *See Marcus Cable, supra*. Not only does this reinforce the fact that they wield monopoly power, it is tantamount to refusing to offer, on reasonable terms, billing and collection services. *College Station, Tx. v. Bryan, Tx.*, 932 F.Supp. 877, 888 (S.D. Tex. 1991) (offering of essential facility, but only on unreasonable terms or conditions, satisfies third prong) (*citing Delaware & Hudson Rwy. v. Consolidated Rail Corp.*, 902 F.2d 174, 179-80 (2nd Cir. 1990) *cert. denied*, 500 U.S. 928 (1991); *City of Chanute v. Williams Natural Gas Co.*, 955 F.2d 641, 647 (10th Cir.), *cert. denied*, 506 U.S. 831 (1992) (*citing United States v. Terminal R.R. Ass'n*, 224 U.S. 383 (1912))).

Finally, it is more than obvious that LECs can provide billing and collection services to casual access providers. That the Commission itself has so much as considered regulations regarding billing and collections services demonstrates its belief that LECs can

reasonably provide such services. *See, e.g., Detariffing of Billing and Collections Services*, CC Docket No. 85-88, Report and Order, 102 FCC.2d 1150 (1986), *recon. denied*, 1 FCC Rcd 445 (1986). So long as LECs recoup the costs of providing casual access providers with billing and collection services, a right that has never been challenged by anyone seeking such services, it is perfectly feasible and reasonable for LECs to provide billing and collection to casual use providers. Moreover, the Commission has adopted regulations to facilitate the provision of such services. 47 U.S.C. § 228(c)(3) (LEC-provided telephone service may not be terminated for challenging, or failing to pay, casual access charges). All told, LEC provision of billing and collection services to casual access providers satisfies each of the four prongs of the essential facilities doctrine.

**III. THE COMMISSION SHOULD INITIATE A RULE MAKING TO ADOPT THE SAFEGUARDS SOUGHT BY MCI, AND THE PROCEEDING SHOULD ENCOMPASS NONDISCRIMINATORY BILLING AND COLLECTION FOR ALL CASUAL ACCESS SERVICES**

Arguments raised in MCI's Petition, as well as the information provided in the *Public Fora*, make it apparent that the Commission's prior determination that billing and collection services were competitively available, *Detariffing of Billing and Collections Services*, 102 FCC.2d 1150 (1986), *recon. denied*, 1 FCC Rcd 445 (1986), was less than completely accurate. The Commission should take the opportunity provided by MCI's Petition to initiate a rule making with regard to LEC provision of billing and collection services. In so doing, the Commission should expand the scope of the proceeding beyond that requested by MCI so as to include all casual access services. Moreover, the goal of the proceeding should not be the adoption of merely transitional regulations. Rather, the Commission should adopt measures that will ensure the availability of LEC-provided billing and collection services to

casual access providers well into the future via regulations that are, if not permanent, directed toward long-term satisfactions of that goal.

The Commission should use the impetus provided by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"), and MCI's Petition, as a springboard for adopting such regulations. With the amendment of the telemessaging rules in the 1996 Act, the appurtenant lifting of the MFJ, and the other amendments wrought by the 1996 Act designed to open traditionally monopolized or uncompetitive services and facilities, *see, e.g.*, 47 U.S.C. §§ 224, 251, 253, 257, the Commission should take the steps necessary to ensure nondiscriminatory access to the LEC billing and collection function essential to offering competitive telecommunications services.<sup>5</sup> Pilgrim therefore suggests that the Commission should adopt rules such that, where a LEC provides billing and collection to itself for anything other than 1+POTS ("plain old telephone service") services, in other words, any premium service,<sup>6</sup> the LEC must provide, under nondiscriminatory terms and conditions, billing and collection for casual access providers. Such regulation will not only foster the competitive telecommunications market envisioned by the 1996 Act, it will curb present abuses and abusive practices engaged in by LECs.

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5. Commission action to guarantee access to billing and collection services may have new relevance and importance given the 8th Circuit's recent striking of the competitive and consumer protections in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996). *Iowa Utilities Board v. FCC*, No. 96-3321, slip op. at 106 (8th Cir. July 18, 1997).

6. For purposes of this rule, Pilgrim proposes that the Commission include the following: teleconferencing, voice mail, CLASS services, call forwarding, directory assistance with per-charge call-completion, all \*-code services, all N11 other than 911 or 411 (*sans* per-charge call-completion), all information services, enhanced services, and time, weather and other similar services. For purposes of clarity vis-a-vis MCI's Petition, Pilgrim notes that the fact that a LEC provides the above-listed or similar services to the customers it serves as a local carrier, the services are not transformed into presubscribed services.

To the extent that a casual access provider manages to forge a billing and collection agreement with a LEC, Pilgrim's experience has been that the LEC, more often than not, seeks extraneous details of the casual access provider's services, including advertisements, services descriptions, and disclosure of proprietary information such as detailed provisioning information. The demand for such information, which the casual access provider in need of essential billing and collection services simply can't refuse, stands as an anti-competitive attempt to seek unfair advantages by wielding monopoly power. *See Marcus Cable Assocs. v. Texas Utils. Elec. Co.*, PA No. 96-002, Declaratory Ruling and Order, DA 97-1527, ¶¶ 22-24, released July 21, 1997 (CSB). LECs have even terminated billing and collection services in order to confer political advantages for candidates they support. *See Petition of Hugh Q. Parmer and Digital Corrections Corporation for Emergency Relief and Declaratory Judgment Regarding the Refusal of Southwestern Bell Telephone Company to Provide Billing and Service for 900 Service, and for Adoption of Rule Revisions*, Project No. 9678, Public Utilities Commission of Texas (1990); *see also* Michael Cinelli, *Southwestern Bell, Parmer Cross Wires Over 900 Number*, HOUSTON POST, Friday, July 27, 1990, at A1 and A12 (copy attached hereto at Appendix B). By initiating a rule making which would adopt rules to force the LECs to abide by the "Golden Rule" (treat others nondiscriminatorily as you would treat yourself), the Commission would take a huge step toward curbing such abuses.

#### IV. BILLING AND COLLECTION ARE AN ESSENTIAL ELEMENT OF NUMEROUS NEW PROVISIONS IN THE 1996 ACT

The 1996 Act includes numerous provisions which have no relevance or meaning without the mandated provision of LEC billing and collection services. The 1996 Act provides protections for the provision of telemessaging services, and both the provisions of the 1996 Act, and the Commission's recent rulings regarding the provision of telemessaging,



make clear that the non-discriminatory provision of billing and collection services by the LECs are essential to the provision and promotion of these services. Pilgrim also notes that the mandated provision of billing and collections services on a non-discriminatory basis by LECs is an issue presented for active consideration by the Federal Trade Commission in its consideration of changes to the pay-per-call rules.

V. CONCLUSION

For the foregoing reasons, the Commission should grant MCI's Petition for Rule Making and broaden the scope of the proceeding to include the regulatory changes advocated by Pilgrim herein.

Respectfully submitted,

**PILGRIM TELEPHONE, INC.**

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July 25, 1997

## **APPENDIX A**

The Wall Street Journal  
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Monday, May 5, 1997

Who's News

AT&T Names Ianna to Succeed Ponder In  
Creating Nationwide Billing System  
By John J. Keller  
Staff Reporter of The Wall Street Journal

NEW YORK -- AT&T Corp. reassigned the executive who supervised its much-criticized effort to build a new nationwide billing system, and handed his job to a deputy who currently oversees the vast AT&T communications network.

Ron Ponder, AT&T's executive vice president and chief information officer, had come under fire inside the company for AT&T's problems with the billing system. His reassignment was announced Friday in an e-mail to employees and confirmed by a company spokesman. People at the company said the move was ordered by AT&T President John R. Walter early last week.

Mr. Ponder, 54 years old, will now be in charge of creating a "blueprint" for making AT&T's global network and computer operations compatible with other partners' networks, AT&T said. Mr. Ponder couldn't be reached for comment.

Named to succeed Mr. Ponder was Frank Ianna, 48, a vice president and deputy, who was elevated to executive vice president. Mr. Ianna will now command a work force of some 35,000 employees and oversee not only the AT&T network but also all of its computer operations and the construction of the new billing system.

A new, more sophisticated billing system is crucial for AT&T to step up its marketing of local, long-distance, wireless and Internet services to its 90 million customers. The new system has taken more than four years to

construct so far -- nearly two years under Mr. Ponder's guidance -- and it still isn't working at full power in most of the country. Without it, AT&T can't bundle all of its services into one simple bill each month.

This has hampered AT&T's ability to expand sales beyond its core long-distance business. As AT&T's chief operating officer, Mr. Walter knows he must turn around this situation before the Bell companies and other competitors meet AT&T head-on within the next year in all markets. In some markets, another phone giant, GTE Corp., has already begun to offer a single bill for all of its services.

AT&T's spokeswoman said the company's billing is improving. "We have made progress toward a single bill, although there is still work that needs to be done," she said. AT&T has doubled the capacity of its network in the last two years under Mr. Ponder's guidance, the spokeswoman said. Ponder 'Uniquely Qualified' Mr. Walter described Mr. Ponder as "uniquely qualified" for the new planning assignment. He "will be an adviser to me," Mr. Walter told AT&T workers in the message.

Mr. Ianna, an electrical engineer, has held a number of jobs over his 25 years with AT&T, including sales and marketing, operations and the design and management of the AT&T network. Currently he is also AT&T's chief quality officer, a title he retains.

His new job will give Mr. Ianna a full plate. Even as he completes work on the new billing system, which has cost AT&T hundreds of millions of dollars, he must also implement a new program to expand the network. The latter project is expected to cost \$9 billion this year alone, AT&T said recently.

AT&T calculates 76 million customer bills a month, including the timing and tracking of calls and any discounts a customer would be due. It bills for eight million of its accounts directly. The remainder of the company's bills goes through the Bell companies, which also

do printing and mailing and for which they are paid hundreds of millions of dollars annually by AT&T.

For new wireless customers, AT&T has been offering bundled long-distance and wireless services. In the tiny pockets of the nation where AT&T has begun offering local services, AT&T is offering a bundled bill. And many AT&T business clients already get bundled bills. Eventually, the telecommunications giant plans to handle all of its own billing.

--- INDEX REFERENCES ---

COMPANY (TICKER): AT&T CORP. (T)

NEWS SUBJECT: Corporate Officers;  
Management Issues; Personnel  
Announcements; World Equity Index (COF  
MNT PER WED)

MARKET SECTOR: Utilities (UTD)

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Providers; Telecommunications, All;  
Telephone Systems (LDS TEL TLS)

PRODUCT: Telecommunications (DTE)

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## APPENDIX B

LEYDON IN WEEKEND: ★★★★★★★★½ — IN STYLE

# The Houston Post

Houston owned, Texas printed

FRIDAY, July 27, 1990

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## Southwestern Bell, Parmer cross wires over 900 number

©1990, The Houston Post Co.  
By MICHAEL CINELLI  
POST POLITICAL REPORTER

In possible violation of federal and state laws, Southwestern Bell on Thursday stopped charging for telephone calls made to a 900 number for Hugh Parmer's U.S. Senate fund-raising campaign, The Houston Post has learned.

Southwestern Bell initially wanted the phone line shut down, but finally settled for less drastic action that allows the calls to continue without any financial benefit to the Democrat's campaign.

A person calling a 900 number is billed a certain amount to hear a recorded message. The cost of the call is charged to the customer's monthly phone statement.

Southwestern Bell then forwards the money to AT&T, which pays the company or individual who contracted for the service.

Parmer's campaign allows a person to call a 900 number to hear a 30-second recorded message at a cost of \$10.

AT&T officials, acting on a request from Southwest-

Please see NUMBER, A-12

# NUMBER: Bell, Parmer cross wires over service

From A-1

ern Bell, contacted the Florida firm handling the 900 number for Parmer and said the billing and collection service would end Thursday, said Walter Steimel Jr., a Washington attorney who had advised Parmer's campaign in setting up the phone line.

"As the common carrier for Texas, Southwestern Bell is obligated to provide service to anyone who requests it," Steimel said. "And since the company handling the phone line is based in Florida, Southwestern Bell and AT&T could be in violation of federal as well as state laws."

"It is a long-held principle in telecommunications common carrier law that (phone companies) have to provide service to everyone who requests it on a non-discriminatory basis," with a few exceptions.

Steimel added that Southwestern Bell's reasons for no longer servicing calls to Parmer's phone line "don't appear to fall into any of these exceptions."

Parmer campaign spokesman Mike Kelly said the phone line would continue to operate.

"We assume this matter is going to be cleared up in a short time," he said. "Our feeling is they can't fail to do this because there are certain protected forms of speech under the First Amendment and one of the most precious forms is the dialogue that exists in the democratic process."

Digital Corrections Corp. of Riviera Beach, Fla., contracted with AT&T in June to operate the 900 number for Parmer's campaign. AT&T approved the script for the recorded message and the advertisement promoting the call.

AT&T contracts with Southwestern Bell to bill and collect on all services AT&T sells, including 900 numbers.

Parmer, who is running against Republican incumbent U.S. Sen. Phil Gramm, started promoting the

phone line in television ads across Texas about a month ago.

Kelly said that while the phone line wasn't "paying for the campaign, it is making money."

Southwestern Bell defended its decision to stop servicing the calls.

"In our contract with AT&T for billing and collecting of 900 number services, there are some specific services we will not bill for, and one of those services is political campaigns," said Southwestern Bell spokesman Ken Brasel. "We don't want to become involved in political campaigns because they can become very heated, very emotional. It's just like we don't bill or collect for adult entertainment."

"We don't want to be involved in something that could harm our image."

AT&T disagreed with Southwestern Bell's action.

When AT&T signed the contract with Digital, "we didn't see anything that we felt would be a problem for Southwestern Bell," said Virgil Wildey, a Houston spokesman for AT&T.

Wildey said AT&T officials would sell Parmer's campaign the service again and expect the regional phone company to bill and collect on the account.

"The 900 service is fairly new and this is a creative use of it, raising money for a political campaign," Wildey added. "All the parties involved in this are probably on the leading edge of the curve in this industry. Once we get this case resolved, it will probably guide all the parties in the future."

Brasel admitted Southwestern Bell would have continued servicing the Parmer account if another candidate hadn't called asking to have a similar line set up for his campaign.

"We were not aware of the service," Brasel said. "We had not seen the content messages. No scripts."

"We were made aware of this (phone line) only on Tuesday afternoon when another candidate

called wanting to know if they could have the same service."

Scott Roberts, president of Digital Corrections, "countered that Southwestern Bell is hurting not only his company's image but future earnings power."

"In light of this event, Southwestern Bell leaves no other course for Digital except for us seek damages within the courts," Roberts said. "It's unfortunate that Southwestern Bell, unless for purely personal reasons, would choose to do this, especially since Digital has been sanctioned and approved by the Federal Election Commission to do 900 (phone number) political campaigns."

Roberts, who has similar contracts with other political candidates, pointed out that he spent about a year getting FEC approval of his operation. A spokesman for the elections commission confirmed that Digital is the 900 number operator sanctioned by the regulatory agency.

"The 900 political campaign industry is exceptionally clean and represents a perfect application of 900 numbers," Roberts said. "It only does it allow mainstream America to listen to unbiased, unedited views by candidates. It also allows a candidate run against an incumbent who has an exceptionally large (financial) chest to have better than a fighting chance in winning the election."

Parmer trails Gramm in fundraising. Latest reports show Democratic challenger has collected just over \$1.5 million since started campaigning in January. Gramm has raised \$14 million since being elected to the Senate in 1984 and has more than \$6.2 million on hand.

Prior to Thursday's unexpected chain of events, Parmer said he decided to try the 900 number to produce a competitive amount of money, given the fact that Gramm has access to special interest political action committees around the country, and they're big hitters.

"It's caused a lot of commotion," he added. "And it's an interesting way to get more voter involvement. If you get somebody to give you a dollar, they'll vote for you the rest of their lives."

Kathy Lewis of The Houston Post's Washington Bureau contributed to this report.